IN THE HIGH COURT OF UTTARKHAND AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 95 of 2003 (S/B)

Date of decision: 13th December, 2007

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Initials of Judge

Date

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
Writ Petition No. 95 of 2003 (S/B)

Jaggi Ram S/o Sri Hari Chand,
Safai Nayak, Nagar Palika Parishad,
Rishikesh, District Dehradun ..... Petitioner

Versus

1. State of Uttarakhand,
   through Secretary, Urban Development,
   Dehradun.
2. Director, Local Bodies,
   Dehradun.
3. Director of Urban Development,
   Uttarakhand, Dehradun.
4. Chairman, Nagar Palika Parishad,
   Rishikesh, District Dehradun.
5. Executive Officer,
   Nagar Palika Parishad,
   Rishikesh, District Dehradun.
6. State Service Tribunal,
   through its Chairman. ..... Respondents

Mr. S.S. Yadav, Advocate for the petitioner.
Mr. Ashish Joshi, Brief Holder for respondents Nos. 1,2,3 & 6.
Mr. Tumul Nailwal, Advocate for respondents Nos. 4 & 5.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

RAJEEV GUPTA, C.J. (Oral)

Petitioner Jaggi Ram has filed this writ petition for the following reliefs:

> "(i) Issue a writ , order or direction in the nature of certiorari quashing the impugned notice and order dated 20.06.2001 and 02.04.2002 and set aside order of State Service Tribunal date 22.10.02 annexures No. 4, 9 & 11 to this writ petition issued by respondent no. 5 and 6.
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> (ii) Issue a writ, order or direction in the nature of mandamus commanding the respondents to allow the petitioner to continue his services with the respondents.

(iii) Issue a writ, order or direction in the nature of mandamus commanding the respondents to make the correction in the service record of the petitioner according of birth certificate.

(iv) Issue any other suitable writ, order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

(v) Award the cost of the petition of the petitioner.

(VI) So God help me."

2. The petitioner, in substance, is seeking quashing of the impugned judgment dated 22.10.2002 passed by Public Services Tribunal, Uttarakhand in Claim Petition No. 14 of 2002.

3. Brief facts of the case, relevant for deciding this writ petition, are that petitioner Jaggi Ram was appointed as Sweeper by Nagar Palika Parishad, Rishikesh on 01.04.1967. The petitioner, after having remained in service for a period of about 35 years, was served with a notice dated 20.06.2001 by Nagar Palika Parishad, Rishikesh informing him of his retirement on attaining the age of superannuation on 31.03.2002. The petitioner eventually retired from service on 31.03.2002. The petitioner claiming that his correct date of birth was 26.09.1949 and seeking his continuance in service for a further period of about 7 years, filed the claim petition before the Public Services Tribunal, Uttarakhand, which was dismissed vide impugned judgment dated 22.10.2002.

4. Respondents Nos. 4 & 5 i.e. Chairman and Executive Officer of Nagar Palika Parishad, Rishikesh, in their counter affidavit, have categorically stated that, in the service record, the petitioner's date of birth was recorded as 01.04.1942 and, as such, he was rightly retired on attaining the age of superannuation i.e. 60 years on 31.03.2002 and the petitioner was informed in advance about the same vide notice dated 20.06.2001.

5. The Tribunal, on a thorough consideration of the rival submissions of the parties and following the dicta of the Apex Court in the cases of State of Uttaranchal Vs. Pitamber Dutt Semwal 2002 (97) FLR 773: C.M.O. Vs. Khadeer Khadri 1995 (71) FLR 9; Commissioner of Police Vs. Bhagwan V. Lahane AIR 1997 SC 1986; and Union of India & others Vs. Kanti Lal Hematram Pandya AIR 1995 SC 1349, did not find any case in favour of the petitioner and, therefore, passed the impugned judgment dismissing the petitioner's claim petition.

6. Peititoner Jaggi Ram joined the service in the year 1967. He was served with the notice on 20.06.2001 of his proposed retirement on attaining the age of superannuation on 31.03.2002. It is not in dispute that petitioner Jaggi Ram did not either apply for or made a representation to respondents Nos. 4 & 5 for correction of his date of birth, as recorded in his service record, for a period of about 34 years. It was, for the first time, after receiving the notice of his proposed retirement that the petitioner submitted a representation to respondents Nos. 4 & 5 for correction of his date of birth in his service record on the ground that his correct date of birth was 26.09.1949.

7. The Apex Court , while considering the permissibility of entertaining request for correction of date of birth in the service record at the fag end of the service career in the case of **State of U.P. & another Vs. Shiv Narain Upadhyaya** reported in **(2005) 6 SCC 49,** observed in para 6:

> "6. Normally, in public service, with entering into the service, even the date of exit, which is said as the date of superannuation or retirement, is also fixed. That is why the date of birth is recorded in the relevant register or service book, relating to the individual concerned. This is the practice prevalent in all services, because every service has fixed the age of retirement, and it is necessary to maintain the date of birth in the service records. <u>But, of late a trend can be noticed, that many public servants, on the eve of their retirement waking up from their supine</u>

slumber raise a dispute about their service records, by either invoking the jurisdiction of the High Court under Article 226 of the Constitution or by filing applications before the Administrative Tribunals concerned, or even filing suits for adjudication as to whether the date of birth recorded is correct or not."

8. The same view was reiterated by the Apex Court in the case of **Coal India Ltd. & another Vs. Andhendu Bikas Bhattarcharjee & others** reported **in (2005) 12 SCC 201,** where it was observed in para 8 of the judgment:

"8. Thereafter, in the year 1995 he applied to the Company to change the date of birth on the basis of duplicate matriculation certificate obtained by him. It is well settled that an employee will not be permitted to apply for change of date of birth at the fag end of his service career. In the instant case we do not know on what basis after 38 years the Secondary Education Board in Bangladesh corrected the matriculation certificate. This is essentially a question of fact, and in any case the High Court ought not to have exercised its writ jurisdiction to determine the real date of birth. We are of the view that the High Court was in error in allowing the writ petition filed by the respondent and directing Coal India Limited, the appellant herein, to change the date of birth of the respondent from 31.12.1938 to 26.1.1943. We, accordingly, set aside the impugned order of the High Court of Calcutta."

9. In yet another judgment in the case of **State of Gujarat & others Vs. Vali Mohmed Dosabhai Sindhi** reported in **2006 AIR SCW 3687,** the Apex Court observed in para 12:

"12. As observed by this Court in State of Tamil Nadu v. T.V. Venugopalan (1994 (6) SCC 302) and State of Orissa and Ors. v. Ramanath Patnaik (1997 (5) SCC 181) when the entry was made in the service record and when the employee was in service he did not make any attempt to have the service record corrected, any amount of evidence produced subsequently is of no consequence. The view expressed in R. Kirubakaran's case (supra) was adopted."

10. Reverting to the case in hand, the petitioner, admittedly, for the first time applied for correction of his date of birth after 34 years of his joining the service and after receiving the notice of his proposed retirement. In our opinion, the petitioner's reliance on the report of his Ossification Test will not improve his case at all. Similarly, we are not impressed at all by the submission of the petitioner's counsel that as the petitioner was an illiterate person, the delay of 34 years, in the petitioner's seeking correction of his date of birth, deserves to be condoned. The petitioner, while joining service in the year 1961, was well aware of his date of birth, as mentioned by him in application form and he cannot be permitted to turn round and disown the date of birth given by himself while joining the service. Now he cannot be permitted to say that his correct date of birth is 26.09.1949 and he should be permitted to continue in service on the basis of this date of birth.

11. There is yet another angle, which prima facie indicates that the date of birth, claimed by the petitioner as his correct date of birth i.e. 26.09.1949, is not petitioner's correct date of birth. On the basis of this date of birth, the petitioner was not even aged 18 years on 01.04.1967, the date of his joining the service. The minimum age of joining the service is 18 years.

12. For the foregoing reasons, we do not find any infirmity in the impugned judgment passed by the Public Services Tribunal, which may warrant interference in this writ petition.

13. The writ petition, therefore, is liable to be dismissed and is hereby dismissed.

14. No order as to costs.

(J.C.S. Rawat. J.) 13.12.2007

(Rajeev Gupta, C.J.) 13.12.2007

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